

In the Court of Appeals of the State of Alaska

Jeffrey Henry,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-12176**

Order

Reconstruct the Record

Date of Notice: **July 22, 2019**

Trial Court Case No. **2KB-13-00679CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Jeffrey Henry was convicted of multiple counts of third-degree assault and one count of second-degree weapons misconduct after a prolonged standoff at his home. Prior to trial, Henry's attorney asked the court to compel the State to produce the Alaska State Troopers' policies on the use of force and their protocol in response to standoff or barricaded-shooter situations. The court ultimately ordered the State to produce copies of these policies to the court for *in camera* review.

The State provided to the court a disc containing the Department of Public Safety's (DPS) Operating Procedures Manual and the Alaska State Troopers' Special Emergency Reaction Team (SERT) manual. After reviewing these materials, the court distributed one section of the DPS manual and one section of the SERT manual, both addressing the use of force. The court ordered that the materials remain in the exclusive possession of counsel and that they be used solely for the purpose of litigating Henry's case. The court did not comment on what actions it took with respect to the records it did not disclose — whether, pursuant to Alaska Criminal Rule 16(d)(5), it retained a

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copy of the two manuals for later appellate review, or whether it returned the disc to the State.

On appeal, Henry challenges the trial court's refusal to release additional portions of the DPS and SERT operating manuals following its *in camera* review. But this Court faces a problem in addressing Henry's claim: The non-disclosed records are not part of the appellate record, and they are therefore unavailable for our review.

In order to adequately review Henry's claim, this Court needs a copy of the two manuals — the Department of Public Safety's Operating Procedures Manual and the Alaska State Troopers' Special Emergency Reaction Team manual — as they existed on September 8, 2014, the day that they were provided to the superior court.

(The trial court did retain, under seal, those materials that it disclosed to the parties — namely, the two chapters on the use of force. These records are therefore available for our review.)

Accordingly, IT IS ORDERED:

1. Pursuant to Alaska Appellate Rule 210(i), we remand this case to the superior court to reconstruct the record related to the DPS and SERT manuals.
2. The State shall provide, directly to the superior court for *in camera* review, copies of the manuals that the prosecutor originally submitted to the superior court in September 2014. Together with its submission, the State shall file an affidavit certifying that these manuals are the same documents that it provided to the court in September 2014.

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3. Following *in camera* review of the documents submitted by the State, the superior court shall then certify whether the State's submission contains the same documents that were provided to the court in September 2014. If the court so certifies, it shall then place the documents under seal pursuant to Administrative Rule 37.5(c)(5) and transmit the documents, along with its certification, to this Court within 60 days of this order. This Court will then resume its consideration of Henry's appeal.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Kyle Roberts, Deputy Clerk

cc: Judge Paul A. Roetman
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